STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON, Plaintiff, v. MEDCO HEALTH SOLUTIONS, INC., and MERCK-MEDCO MANAGED CARE, L.L.C., Defendants.	NO. CONSENT ORDER OF COURT FOR PERMANENT INJUNCTION AND MONETARY SETTLEMENT

Plaintiff, State of Washington ("State"), acting by and through Attorney General Christine O. Gregoire and Assistant Attorney General Robert A. Lipson of the Consumer Protection Division of the Washington State Attorney General's Office, has brought this action pursuant to the RCW 19.86.020 and RCW 19.86.080, having filed a complaint against the defendants, Medco Health Solutions, Inc. and Merck-Medco Managed Care, L.L.C., and the parties having consented to the entry of this Consent Order ("Order") for the purposes of settlement only, without this Order constituting evidence against or any admission by any party, and without trial of any issue of fact or law, NOW THEREFORE, upon the consent of the parties hereto IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

I. PARTIES

1. The State of Washington is the plaintiff in this case.

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2. Medco Health Solutions, Inc., and its corporate predecessor, Merck-Medco Managed Care, L.L.C., together with their subsidiaries and affiliates (hereafter collectively referred to as "Medco") are the defendants in this case. Medco has its principal place of business at 100 Parsons Pond Drive, Franklin Lakes, NJ 07417. Medco is a pharmacy benefits manager, which administers pharmacy benefits for health plans and employers, including governmental employers.

II. BACKGROUND

1. Beginning in August 2002, the Attorneys General[1] reviewed Medco's drug interchange programs, its practices regarding the disclosure and retention of rebates received from manufacturers, disclosures of potential costs savings to patients and client plans, and issues regarding whether the conduct of its pharmacists violated consumer protection statutes by failing to comply with pharmaceutical ethical principles and guidelines as alleged in the Complaint (the "Covered Conduct"). The States specifically reviewed these practices for compliance with the States' consumer protection statutes[2] and, in certain states, false claims statutes and subsequently filed the pending Complaint.

[1] The States of Arizona, California, Connecticut, Delaware, Florida, Illinois, Iowa, Louisiana, Maine, Maryland, Nevada, New York, North Carolina, Oregon, Texas, Vermont, and Washington and the Commonwealths of Massachusetts, Pennsylvania, and Virginia, participated in the investigation, and shall, for purposes of this Consent Order, be referred to as "the States" or "the Participating States."

[2] The States' consumer protection statutes are: ARIZONA - Consumer Fraud Act, A.R.S. § 44-1521 *et seq.;* CALIFORNIA - Bus. & Prof. Code §§ 17200 *et seq., and* 17500 *et seq.*; CONNECTICUT - Conn. Gen. Stat. § 42-110a; DELAWARE - Consumer Fraud Act, 6 Del.C. Section 2511, *et seq*., UDTPA, 6 Del.C. Section 2531, *et seq.*; FLORIDA - Deceptive and Unfair Trade Practices Act, Fla. Stat. Ch. 501.201 *et seq.*; ILLINOIS - Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1 *et seq.* (1998); IOWA - Iowa Consumer Fraud Act, Iowa Code Section 714.16; LOUISIANA - LSA R. S. 51:1410 and LSA R. S. 51:1401, *et. seq;* MAINE –Unfair Trade Practices Act, 5 M.R.S.A. § 205-A, *et.seq*.; MARYLAND - Consumer Protection Act, Maryland Commercial Law Code Annotated § 13-101 *et seq.*; MASSACHUSETTS - Consumer Protection Act, M.G.L. c. 93A *et seq.*; NEVADA - Deceptive Trade Practices Act, Nevada Revised Statutes 598.0903 *et seq*.; NEW YORK - N.Y. Gen. Bus. Law §§ 349 & 350 and Executive Law § 63(12); NORTH CAROLINA - Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75-1.1 *et seq.*; OREGON - Unlawful Trade Practices Act, ORS 646.605 to 646.656; PENNSYLVANIA - Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq*.; TEXAS - Deceptive Trade Practices and Consumer Protection Act, Tex. Bus. And Com. Code § 17.47., (Vernon 2002); VERMONT - Consumer Fraud Act, 9 V.S.A. § 2451 *et seq.*; VIRGINIA - Virginia

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2. The State and defendants captioned above have agreed to the entry of this Consent Order of Court for Permanent Injunction and Monetary Settlement ("Order") by this Court to resolve all matters of dispute between them in this action.

III. FINDINGS

1. This Court has jurisdiction of the subject matter of this case and of the parties consenting hereto.

2. Venue is proper as to all parties in King County Superior Court.

3. Defendants have done business in each of the States through the provision of pharmacy benefit management services to persons who are consumers in each of the States.

4. Defendants have, by signature of their counsel hereto, waived any right to appeal, petition for certiorari, or move to reargue or rehear this judgment and order. Entry of this Order is in the public interest.

5. Entry of this Order is not a finding of liability by the defendants.

IV. DEFINITIONS

Defined terms include:

"Actual Cost Savings" shall mean, with respect to a proposed Drug Interchange, the actual amount in dollars a Client Plan and Patient, respectively, will save in Net Drug Costs annually if a Drug Interchange occurs at the expected dosage, assuming the Patient will use the drug for twelve months.

"Bundled Drug" shall mean a drug for which a rebate is given only on the condition that other drugs from the same manufacturer are included on a formulary.

"Clear & Conspicuous" shall mean a disclosure in such size, color, contrast and location, that it is readily noticeable, readable and understandable; is presented in proximity to all information necessary to prevent it from being misleading or deceptive, in a manner that

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Consumer Protection Act, § 59.1 -196 *et seq.*; WASHINGTON - Unfair Business Practices/Consumer Protection Act, R.C.W. 19.86 *et seq.*

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such information is readily noticeable, readable and understandable and not obscured in any manner; and if a print disclosure, it appears in a type size, contrast and location sufficient for a Patient consumer or Prescriber to read and comprehend it. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies or is necessary to prevent other information from being misleading or deceptive, then the statement must be presented in proximity to that information, in a manner that is readily noticeable, readable, and understandable, and is not obscured in any manner. A print disclosure must appear in a type size, contrast and location sufficient for a Patient or Prescriber to read and comprehend it. For purposes of this Consent Judgment, nothing in this definition shall prevent Medco from disclosing prescription, health and safety information first.

"Client Plan" shall mean any governmental entity, employer, insurer, union or other entity that contracts directly with Medco to provide or administer a pharmacy benefit for such plan and its Beneficiaries.

"Currently Prescribed Drug" shall mean a drug prescribed for a Patient that is the subject of a Medco Drug Interchange Solicitation.

"Drug Interchange" shall mean any change from one prescription drug to another, requested by Medco. "Drug Interchange," however, shall not include those Drug Interchanges:

a) initiated pursuant to a Drug Utilization Review;

b) initiated for Patient safety reasons;

c) required due to market unavailability of the Currently Prescribed Drug;

d) from a brand drug to its generic or chemical equivalent, as defined by the FDA;

e) required for coverage reasons, that is, where the Currently Prescribed Drug is not covered by the formulary or plan applicable to the Patient.

"Drug Interchange-Related Health Care Costs" shall mean a Patient's co-pays for tests, doctor visits, and other health care services that are incurred in accordance with a treating

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physician's instructions, and either a) are incurred as a result of a Drug Interchange, for the purpose of assessing the continuum of the previous therapy, for up to six months following a Drug Interchange; or b) are incurred as a result of a Drug Interchange Solicitation, for the purpose of assessing whether to undertake a proposed Drug Interchange. With respect to co-pays that may be incurred for purposes of assessing whether to undertake a proposed Drug Interchange (within clause (b) above), if, following a Drug Interchange Solicitation, a Prescriber or Patient indicates that a proposed Drug Interchange will result in such costs being incurred, Medco in its discretion may cease to seek the proposed Drug Interchange. If a Patient, because of a deductible or cap requirement, pays actual costs of tests or doctor visits instead of co-pays, then that Patient's Drug Interchange-Related Health Care Costs shall be based on the co-pay (if any) that would apply upon satisfaction of the deductible or the co-pay applicable prior to the cap being met.

"Drug Interchange Solicitation" shall mean any communication by Medco for the purpose of requesting a Drug Interchange.

"Generic Equivalent" shall mean a medication deemed chemically equivalent to a branded drug**,** signified by an AB rating by the Food and Drug Administration, approval for substitution on any state formulary, or approval for substitution by the Medco P&T Committee.

"Manufacturer Payments" shall mean any or all compensation or remuneration Medco receives from a pharmaceutical manufacturer, including but not limited to, rebates, regardless of how categorized, market share incentives, commissions, mail service purchase discounts, and administrative or management fees. It also includes any fees received for sales of utilization data to a pharmaceutical manufacturer. It does not include purchase discounts based upon invoiced purchase terms. For purposes of Medco's "Manufacturer Payment Reports" provided to Client Plans hereunder, all "Manufacturer Payments" received by Medco fit into

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one of two categories defined herein, namely, "Manufacturer Formulary Payments" or "Manufacturer Additional Payments."

"Manufacturer Formulary Payments" shall mean Payments that Medco receives from a manufacturer in return for formulary placement and/or access, or payments that are characterized as "formulary" or "base" rebates or payments pursuant to Medco's agreements with pharmaceutical manufacturers.

"Manufacturer Additional Payments" shall mean all Manufacturer Payments other than Manufacturer Formulary Payments. These payments are not provided by Medco to those Client Plans that have contracted to receive a certain share of "formulary" rebates or payments, although certain Client Plans may contract to receive a certain share of all Manufacturer Payments, including both "Formulary" and "Additional" Payments.

"Medco" shall mean Medco Health Solutions, Inc. and Merck-Medco Managed Care L.L.C, and their subsidiaries including all state licensed pharmacy subsidiaries and affiliated companies, their corporate predecessors and successors, and their agents and employees, including pharmacists directly employed by Medco.

"Medco Total Product Revenue" shall mean Medco's net revenue which consists principally of sales of prescription drugs to clients, either through Medco's network of contractually affiliated retail pharmacies or through Medco's mail order pharmacies. Where Medco acts as a principal in accordance with generally accepted accounting principles, which is the case in the majority of Medco's client contracts, revenues are recognized at the prescription price negotiated with clients, as well as the associated administrative fees.

"Minimum Cost Savings" shall mean the minimum amount in dollars a Client Plan and Patient, respectively, will save in their costs annually if a Drug Interchange occurred at the expected dosage.

"Net Drug Cost" shall mean the price Medco charges a Client Plan and/or Patient for a prescription drug whether that drug is delivered through a retail pharmacy or mail order. The

Net Drug Cost may take into account all discounts, rebates, credits or other payments that lower the cost of the drug, to the extent such payments are provided to the Client Plan. Net Drug Cost may be reduced by Manufacturer Payments to the extent those payments are provided to the Client Plan, but shall not be reduced by Manufacturer Payments that are paid to and retained by Medco.

"Patient" shall mean a person whose prescription drug benefit is administered by Medco.

"P&T Committee" shall mean the Pharmacy & Therapeutics Committee maintained by Medco, comprised of at least seven members, all of whom shall be physicians, pharmacists, or other health care professionals, and a majority of whom are actively practicing and who are not employed by Medco, responsible for determining Medco's standard formularies, the clinical appropriateness for Medco concerning Medco's Drug Interchange programs, developing and maintaining clinical criteria used as a basis for Medco's standard coverage management program, and other responsibilities pertaining to the clinical components of programs and services designed to effect drug utilization.

"Prescriber" means a physician, dentist, physician's assistant, optometrist or other health care professional authorized by law to write prescriptions for prescription drugs.

"Proposed Drug" shall mean the drug or drugs that Medco, in its Drug Interchange Solicitation, proposes to substitute for a Currently Prescribed Drug.

V. INJUNCTION

A. Restrictions on Drug Interchanges and Required Disclosure of Pricing Information

Unless otherwise specifically directed by a Client Plan with respect to a proposed Drug Interchange, Medco shall not do any of the following:

1. Make any Drug Interchange Solicitation where the Net Drug Cost of the Proposed Drug exceeds that of the Currently Prescribed Drug. Medco shall allocate Bundled

Drug rebates and discounts to the Net Drug Cost of each drug in the manner agreed to between Medco and the Client Plan.

2. Make any Drug Interchange Solicitation where the Currently Prescribed Drug has generic equivalents and the Proposed Drug has no generic equivalents, unless the Proposed Drug has a lower Net Drug Cost than all generic equivalents of the Currently Prescribed Drug.

3. Make any Drug Interchange Solicitation where the patent protection for the Currently Prescribed Drug is scheduled to expire within six months of the Drug Interchange Solicitation, or where the effect of the proposed Drug Interchange reasonably is to avoid substitution for, or generic competition against, the Currently Prescribed Drug (excepting Drug Interchanges with the effect of decreasing Net Drug Costs).

4. Make any Drug Interchange that fails to disclose to Prescribers and Patients, Clearly and Conspicuously, Minimum Cost Savings, or Actual Cost Savings, as well as the difference, if any, in co-payments to be made by the Patient (or absence of effect on co-payments, if such is the case). When making these disclosures, Medco may reasonably rely on information provided by the Client Plan with respect to eligibility and co-payments, irrespective of deductibles and caps.

5. Make any Drug Interchange Solicitation to a Patient who, within two years preceding the solicitation, and with respect to the same therapeutic class involved in the proposed Drug Interchange, has either a) interchanged his or her drug following a Drug Interchange Solicitation from Medco or b) interchanged his or her drug following a Medco Drug Interchange Solicitation but had the Interchange reversed, unless all of the Proposed Drugs in the current Drug Interchange Solicitation were not among the Proposed Drugs in the prior Drug Interchange Solicitation.

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B. Medco's Payment of Drug Interchange-Related Health Care Costs

1. Medco shall pay all out-of-pocket costs for Drug Interchange-Related Health Care Costs incurred by a Patient by reimbursing the Patient for such costs, within thirty days of receipt of a claims form for such costs.

2. Medco shall enact and follow a procedure for reimbursing Patients such out-of-pocket costs, by which Medco shall, without limitation, (a) permit Patients, Prescribers or Treating Physicians to request such reimbursement, by phone or in writing, and (b) upon such request, provide a single-page claim form (with instructions) to request reimbursement. For reimbursement requests initiated by Patients (not Prescribers or Treating Physicians), Medco may (but need not) require that the Patient's reimbursement claim provide information showing that Interchange-Related Health Care Costs were incurred, which requirement may be satisfied by a Physician or Prescriber's notation at a designated place on the claim form, or by providing a Physician's written order, or other evidence showing payment of costs (e.g., co-pays for tests or doctor visits) incurred as a result of a Drug Interchange. Medco shall not directly or indirectly prevent or discourage Patients or Doctors from requesting or receiving reimbursement for Drug Interchange-Related Health Care Costs.

3. Medco's written communications to both Prescribers and Patients concerning Drug Interchanges, as set forth below, shall Clearly and Conspicuously disclose Medco's policy, consistent with this section, with respect to Drug Interchange-Related Health Care Costs. Medco's telephone communications with Prescribers and Patients concerning Drug Interchanges, as set forth below, shall communicate the existence of Medco's policies with respect to Drug Interchange-Related Health Care Costs. In its communications with Prescribers, Patients and Client Plans, Medco shall not misrepresent, directly or indirectly, its policy with respect to Drug Interchange-Related Health Care Costs.

4. Should Drug Interchange-Related Health Care Costs paid to a Patient with respect to any particular Interchange exceed $500.00, Medco, while complying with the timely

reimbursement requirement set forth in B.1., above, may, in its sole discretion, choose to have a third party chosen by Medco to review the costs paid. If a determination is made that the costs were not related to an Interchange, nothing herein shall prevent Medco from pursuing any legal remedies Medco may have against the Patient and any other party involved.

C. Medco's Drug Interchange Solicitation Process and Disclosure of Pricing Information

1. Drug Interchange Solicitation to Prescribers.

Medco shall not interchange (or obtain an interchange promise for) the prescription drug of any Patient without first obtaining express verifiable authorization from the Prescriber of the Currently Prescribed Drug. All Medco Drug Interchange Solicitations to a Prescriber shall:

a) identify the name and title of the person making the Drug Interchange Solicitation;

b) state that Medco is soliciting a Drug Interchange;

c) identify the Minimum Cost Savings or Actual Cost Savings to be achieved by interchanging to the Proposed Drug from the Currently Prescribed Drug

d) describe under what circumstances the Currently Prescribed Drug will continue to be covered by the Client Plan, if such is the case;

e) describe the difference in co-pay, if any, or the absence of effect on co-pay, if such is the case;

f) if Medco receives Manufacturer Payments from a drug manufacturer as a result of the Proposed Drug Interchange or the Interchange Solicitation that is not reflected in Net Drug Cost because it is compensation that does not inure to Medco's Client Plan, Medco shall disclose that it receives such compensation or potential compensation;

g) Disclose the existence of Medco's policy with respect to Drug Interchange-Related Health Care Costs outlined in Paragraph V.B. If the Drug Interchange Solicitation is written, this disclosure shall be clear and conspicuous and direct the Prescriber to the written communication (Confirmation to Prescribers, provided below) for details. If the Drug Interchange Solicitation is by telephone, Medco may disclose its policy by directing the Prescriber to the written communication for details.

h) Disclose any material differences, as determined by the Medco P&T Committee, between the Currently Prescribed Drug and the Proposed Drug with respect to side effects or potential effects on patient health and safety.

2. Authorization and Written Confirmation to Prescribers for Drug Interchanges for home delivery or promises for Drug Interchanges obtained at retail.

a) Medco shall not Interchange a Patient's drug absent express verifiable authorization from the Prescriber, as communicated (i) directly by the Prescriber (in writing or verbally) or (ii) by a person who affirms (in writing or verbally) that the Interchange has been authorized by the Prescriber. If such authorization is by a person other than the Prescriber and verbal, Medco shall request that person's name and title or position.

b) Medco shall maintain records memorializing, with respect to each Drug Interchange, how express verifiable authorization was obtained, including the name of the person providing express verifiable authorization of the Drug Interchange; whether the authorization was written or verbal; and, if verbal and by a person other than the Prescriber, that person's title or position, if provided.

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c) Upon such express verifiable authorization of a Drug Interchange, Medco shall send a written communication to the Prescriber confirming the Interchange. If the Solicitation (containing the requirements above) was not in writing, then the written confirmation shall include the information required in Section V.C.1. Regardless whether the Interchange Solicitation was in writing, the written confirmation shall:

i) identify the Minimum Cost Savings or Actual Cost Savings resulting from the interchange;

ii) Clearly and Conspicuously disclose Medco's policy with respect to Drug Interchange-Related Health Care Costs, in accordance with Section V.B.; and

iii) provide a toll free telephone number for the Prescriber.

3. Interchange Confirmation to Patient.

With respect to Medco home delivery prescriptions, within 24 hours of express verifiable authorization of a Drug Interchange by the Prescriber or dispensing the Proposed Drug, whichever is earlier, Medco shall send to the Patient a written communication ("Written Patient Drug Interchange Notice,") and make a telephonic communication ("Telephonic Patient Drug Interchange Notice") advising the Patient of the Prescriber's approval of the Drug Interchange. Following express verifiable authorization of a Prescriber's approval of a Drug Interchange for a non-home delivery prescription, Medco shall send the Patient a Written Patient Drug Interchange Notice. The Written Patient Drug Interchange Notice shall Clearly and Conspicuously:

a) state that Medco requested a Drug Interchange by contacting the Patient's Prescriber;

b) state that, following Medco's Interchange Solicitation, the Prescriber approved the Drug Interchange;

c) not represent that the Prescriber initiated the Interchange;

d) identify the Proposed Drug and the Currently Prescribed Drug;

e) identify the Minimum Cost Savings or Actual Cost Savings;

f) describe under what circumstances the Currently Prescribed Drug will continue to be covered by the Client Plan, if such is the case;

g) describe the difference in co-pay, if any, or the absence of effect on co-pay, if such is the case;

h) if Medco receives compensation from a drug manufacturer as a result of the Proposed Drug Interchange or the Drug Interchange Solicitation that is not reflected in the Net Drug Cost because it is compensation that does not inure to Medco's Client Plan, Medco shall disclose the fact of such compensation or potential compensation;

i) disclose Medco's policy with respect to Drug Interchange-Related Health Care Costs, in accordance with Section B; and

j) advise the Patient that he or she may decline the Drug Interchange in which case the Patient will receive the Currently Prescribed Drug, if the currently Prescribed Drug remains on the Client Plan's formulary and the Patient is willing to pay any difference in Co-Pay.

The Telephonic Patient Interchange Notice made for Medco home delivery Drug Interchanges shall:

a) state that Medco requested a Drug Interchange by contacting the Patient's Prescriber;

b) state that, following Medco's Interchange Solicitation, the Prescriber approved the Drug Interchange;

c) not represent that the Prescriber initiated the interchange;

d) advise the Patient that further written information about the Drug Interchange will arrive in the mail and give a toll-free telephone number so that the Patient may speak to a customer service representative about the Interchange.

4. Rejected Interchanges.

Unless a Currently Prescribed Drug is no longer on the Client Plan's formulary or the Patient is unwilling to pay any higher applicable Co-Pay or other costs, Medco shall cancel and reverse the Drug Interchange upon written or verbal instructions from a Prescriber or Patient. Medco shall maintain a toll free telephone number(s) during business hours (currently 8:00 a.m. to 8:00 p.m. Eastern, but in any event at least eight hours a day, Monday through Friday) to field telephone calls from Patients and Prescribers in response to Medco's interchange confirmations, and the customer service standards (e.g., waiting time) for those telephone numbers shall be equivalent to Medco's other customer service standards. Upon cancellation, if Medco has not yet dispensed the Proposed Drug, Medco, upon approval of the Prescriber, shall dispense the Currently Prescribed Drug. If Medco has already dispensed the Proposed Drug, Medco shall obtain a prescription for, and dispense the Currently Prescribed Drug, and Medco shall charge the Patient only one co-pay and shipping and handling fees (so that a proposed but reversed Interchange will not increase Patient costs beyond the costs had Medco dispensed the Currently Prescribed Drug). Unless otherwise provided by contract with a Client Plan, Medco shall also bear the expense of shipping the Proposed Drug back to Medco (either by offset or by reversing and crediting the initial co-pay). Medco will provide notice to Client Plan that Client Plans may request information regarding the costs to it resulting from a Patient's rejection of a Proposed Drug Interchange. In the event a Patient will exhaust his or her supply of the Currently Prescribed Drug before a replacement shipment will arrive to the Patient, Medco shall arrange for dispensing of an appropriate quantity of replacement medications at a participating Medco network pharmacy at no additional cost to the Patient.

Further, in the event that a Patient reverses an Interchange and Medco is unable to obtain approval from the Prescriber (or a physician covering for Prescriber) for the Currently Prescribed Drug, Medco shall take reasonable steps to provide either the Currently Prescribed Drug or the Proposed Drug before the Patient exhausts his or her existing supply.

5. P & T Committee representations in all Interchange Communications.

With respect to all Drug Interchange Solicitations and communications related to Drug Interchanges, Medco shall not misrepresent the role of Medco's P&T Committee in initiating, reviewing, approving or endorsing a Proposed Drug Interchange or Interchange Solicitation. If Medco mentions the P&T Committee in any Interchange Solicitation or communication related to Drug Interchanges, Medco shall Clearly and Conspicuously:

a) disclose the role of Medco's P&T Committee in Medco's Interchange proposal;

b) disclose that the Interchange being proposed by Medco was not initiated by the P&T Committee and not initiated due to medical care considerations;

c) disclose that the P&T Committee did not consider cost issues, if such is the case.

6. With respect to the operation of the P&T Committee, Medco shall provide to each plan (at the Plan's expense, unless the Client Plan contract otherwise provides), upon request:

a) copies of all information provided to the P&T Committee;

b) copies of all minutes of the P&T Committee;

i) Minutes shall include the list of attendees at the meeting, the record of all votes to approve or disapprove a drug for the formulary, or therapeutic interchange or other action undertaken by the committee, a summary of any discussion of material

differences between a Currently Prescribed Drug and a Proposed Drug with respect to side effects or potential effects on patient health and safety, and a summary of all discussions on each agenda point.

In addition, regardless whether provided by contract, Medco shall advise each plan that it may send a representative, at the plan's expense, to attend any P&T Committee meeting, subject to reasonable space limitations, which may restrict the number of such observers at each meeting to five plans.

7. In the event Medco's P&T Committee approves a Drug Interchange with conditions, Medco shall provide a complete description of such conditions to the Prescriber at the time of the Interchange Solicitation.

D. Medco Monitoring of Interchange Health Effects

1. Medco shall monitor the effects of Drug Interchanges requested by Medco upon the health of Patients, and shall report to Medco's P&T Committee, not less than quarterly, the results of such monitoring. Such monitoring shall include, without limitation, a system designed to a) identify Patient and Prescriber communications with Medco that concern the efficacy or health effects of a Drug Interchange, and b) capture information from such communications in a manner that Medco can collect, and generate reports on, Patient and Prescriber communications concerning Drug Interchanges. Medco shall report the results of such monitoring to Medco's P&T Committee, not less than quarterly, and the P&T Committee shall reasonably consider the results of Medco's monitoring.

E. Medco's Disclosure to Client Plans of Compensation From Drug Manufacturers

1. Quarterly and Annual Disclosures.

With respect to each Client Plan that has contracted to receive (directly or by credit) any Manufacturer Payments from Medco, for each Medco Fiscal Year during which the Client

Plan receives any such Manufacturer Payments, Medco shall provide those Client Plans, for each Medco fiscal quarter and year, a Manufacturer Payments Report. Medco's Manufacturer Payment Reports shall identify, for the reported fiscal quarter or year (the "reporting period"), the information set forth below at (a) through (e). If the precise reported figure is not known by Medco at the time of its report, Medco shall provide its current best estimate of the reported information, provided that, with respect to each report, should the reported information subsequently need revision in accordance with generally accepted accounting principles, Medco will provide an update to the reported information to reflect that revision.

a) the dollar amount of Medco Total Product Revenue (as defined) for the reporting period, with respect to Medco's entire client base, together with:

b) the dollar amount of total drug expenditures for each Client Plan;

c) the dollar amount of all Manufacturer Payments earned by Medco for the reporting period;

d) the percentage of all Manufacturer Payments earned by Medco for the reporting period that were Manufacturer Formulary Payments; and

e) the percentage of all Manufacturer Payments received by Medco during the reporting period that were Manufacturer Additional Payments.

Medco's Manufacturer Payment Reports shall present the above information in a Clear and Conspicuous manner that serves to inform Client Plans of all Manufacturer Payments earned by Medco, including, for instance, those Client Plans that share only in Manufacturer Formulary Payments but not Manufacturer Additional Payments.

2. Disclosure at Contracting Stage.

Medco shall disclose to each Client Plan or prospective Client Plan, in advance of executing an agreement (whether an initial or renewal contract) with such Client Plan:

a) that Medco will solicit and receive Manufacturer Payments and that Medco may pass through those payments to Client Plans or may retain those payments for itself, depending on contract terms;

b) the information set forth in Medco's Manufacturer Payment Report pursuant to Section E.1 (a), (c), (d) and (e) above, concerning the most recent Medco fiscal year for which such information is publicly available, at the time of the communication under this section;

c) that Medco will report, quarterly and annually, on Manufacturer Payments, consistent with Section E(1) above.

F. Pharmaceutical Ethics

1. Medco shall adopt the code of ethics of the American Pharmacists Association for its employed pharmacists. Medco accepts the APhA Principles of Practice for Pharmaceutical Care as a framework for ongoing evolution of its pharmacy practice. Medco will provide these documents to all staff pharmacists with any necessary explanations to make clear to staff pharmacists that Medco is striving to achieve the objectives established by the profession.

2. Medco shall make available to its employed pharmacists, Client Plans and Patients copies (which may be in electronic form or available on a web site) of such codes of ethics or professional standards.

3. Medco shall require its pharmacists to comply with all state law requirements governing pharmacists.

4. Medco shall permit its pharmacists to give good faith, professional opinions.

5. Medco shall require that its pharmacists form an independent professional judgment that a Drug Interchange would be in a Patient's best interest before soliciting a Drug Interchange.

G. Additional Price Transparency Remedies

1. Medco shall not refuse to respond to Request for Proposal or Request for Bid from a plan on the grounds that the proposal does not use AWP or prohibits the use of AWP in pricing terms and Medco, if so asked**,** shall communicate to each plan that pricing methods other than use of AWP are available.

2. Medco shall not describe relative prices of drugs by use of symbols or other indirect means without disclosing a price range those symbols represent.

VI. REIMBURSEMENT AND CY PRES PAYMENT

A. Reimbursement

1. Medco shall pay up to $2.5 million to reimburse "Affected Consumers," as defined below, up to $25.00 each for out-of-pocket expenses incurred as a result of a "Statin Drug Interchange," using the notification and claims process described in Section VI.A.1 & 2. For purposes of this section, a "Statin Drug Interchange" means a Patient's Drug Interchange, from one already dispensed branded drug to another branded drug within the HMG-CoA Reductase Inhibitors therapeutic class, from January 1, 2000 through the Effective Date. "Affected Consumers" means those persons who (i) following a Statin Drug Interchange, paid co-pays for tests, doctor visits or other health care services incurred as a result of the Statin Drug Interchange, (ii) have not received reimbursement from Medco for those out-of-pocket expenses, and (iii) currently reside in a Participating State or resided in a Participating State at the time of the Statin Drug Interchange at issue.

2. Medco, or its designee, shall identify and pay Affected Consumers using the following notification and claims process, the costs of which shall be borne by Medco:

a) Using its Patient records and records related to Drug Interchanges, Medco shall identify all Patients who had a Statin Drug Interchange, including statin prescriptions filled by a Medco home delivery (mail order) pharmacy or at retail following a "retail promise" letter from

Medco (collectively, "Potential Affected Consumers"). Medco shall make reasonable efforts to identify the current address for each Potential Affected Consumer, using its current Patient records and skip-tracing.

b) Medco shall mail to each Potential Affected Consumer a "Reimbursement Notice and Claim Form," in a form (or forms) approved by the participating Attorneys General. The Reimbursement Notice shall, clearly and conspicuously, (i) advise Potential Affected Consumers that Medco reached a settlement with the participating Attorneys General, and that Medco will reimburse Affected Consumers up to $25.00 for interchange-related expenses, (ii) explain how Affected Consumers may obtain reimbursement, and (iii) explain that Affected Consumers must submit all claims to Medco within six months of the Affected Consumer's receipt of the notice and claims form.

c) The Claim Form, which shall be coupled with the Reimbursement Notice, may request that the Potential Affected Consumer: i) generally describe any costs incurred as a result of a Statin Drug Interchange; and ii) attest, under penalty of perjury, that the information provided on the claim form is true and accurate. The Claim Form also will advise the Potential Affected Consumer that acceptance of reimbursement pursuant to the claims process will reduce, by the reimbursement amount, any recovery by any other means, of out-of-pocket costs attributable to co-pays for tests, doctor visits or other health care services incurred as a result of the Statin Drug Interchange. A pre-paid envelope shall accompany the Reimbursement Notice and Claim Form. The Claim Form also shall provide a toll-free number for Potential Affected Consumers to call should they have questions.

d) Medco shall mail all notices as soon as practicable following the Effective Date, but in any event within four months of the Effective Date. Medco then shall accept claims for seven months after the last mailing of notice and claim forms ("the time period"). After expiration of the time period, Medco shall make reimbursement of $25.00 to each Affected Consumer who submits a completed claim form and attests that he or she incurred out-of-pocket expenses following a Statin Drug Interchange (a "qualified claim"). In the event that, after expiration of the time period, Medco has received qualified claims in an amount that exceeds $2.5 million based upon a $25.00 payment (i.e., more than 100,000 qualified claims), then payments to Affected Consumers shall be prorated by dividing the $2.5 million by the number of qualified claims received.

e) Following completion of the above notification and claims process, and in any event not more than 12 months after the Effective Date, Medco shall certify to the participating Attorneys General that it has complied with this reimbursement section and provide a report identifying, without limitation: i) the number of Reimbursement and Claims Forms mailed to Potentially Affected Consumers, ii) the number of phone calls received concerning the notice and claims process, iii) the number of claims forms submitted, iv) the number of qualified claims submitted, v) the total amount in reimbursement paid by Medco to Affected Consumers, and vi) the costs of administration of this reimbursement program.

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B. Cy Pres Payment

1. Medco shall pay the participating State Attorneys General $20,200,000, as described further in this section VI.B, to be apportioned among the participating states proportionally based upon population, with a minimum per state distribution, as agreed by the participating states. Each state's proportional share of the $20.2 million shall be reflected in a schedule provided to Medco in advance of the Effective Date (the "State Schedule").

2. Within a reasonable time after the Effective Date, but not to exceed 90 days after the Effective Date, each participating State shall elect whether to receive its proportional share as a monetary payment or, in whole or in part, as pharmaceuticals as described further in VI.B.5 & 6, below, and shall provide Medco written notice of its election. Each State electing to receive a monetary payment shall include, in its written notice of election, payment instructions (i.e., to whom payment should be directed). Each State making a partial election (*i.e.*, choosing both monetary payment and pharmaceuticals), shall express the elected monetary payment in dollars, indicating that any balance of that state's distribution be apportioned to pharmaceuticals.

3. Within 14 days of its receipt of such written notice of a State's election, Medco shall pay to the State, by check and consistent with the State's reasonable payment instructions, that portion of the State's proportional share that, consistent with the State's election, is to be paid in cash (the "Monetary Portion"). Each state's Monetary Portion shall not exceed the State's proportional share of the $20.2 million set forth on the State Schedule. Medco need not pay a State's Monetary Portion until: a) Medco has received the State's written notice of election, described above, and b) the State has entered a Consent Order in its state court in substantively the same form as this Consent Order.

4. States that receive a monetary payment shall make a *cy pres* distribution of these funds, pursuant to a state-specific Cy Pres Distribution Plan, to a political subdivision(s) thereof or to a state agency or program, a non-profit corporation(s) and/or a charitable

organization(s), at the sole discretion of the Attorney General of each Respective State, with the express condition that the funds be used to benefit low income, disabled, or elderly consumers of prescription medications, to promote lower drug costs for residents of that State, to educate consumers concerning the cost differences among medications, or to fund other programs reasonably targeted to benefit a substantial number of persons affected by the Covered Conduct that is the subject of this Consent Order.

5. As an alternative to monetary payment of their respective proportional share of this *cy pres* payment, participating states may elect (as described in B.2, above) to receive their respective payment under this section, in whole or in part, in the form of pharmaceuticals to be provided by Medco, pursuant to section B.6, immediately below. Each State electing to receive pharmaceuticals via the pre-paid generic card described in section B.6(b) below, shall be entitled to receive pharmaceuticals distributed under section B.6(b), valued as described below, in an amount equal to its proportional share of the $20.2 million cy pres payment plus 25 per cent (the "State pharmaceutical amount"), such that the value of this alternative cy pres distribution would increase to $25.25 million in the event all Participating States elected to receive pharmaceuticals via the pre-paid generic card.

6. Distribution of pharmaceuticals.

Medco shall provide pharmaceuticals, up to the State pharmaceutical amount, to each State electing to receive pharmaceuticals ("electing State"), in either or both of two ways, as chosen by the electing State:

a) Shipment of pharmaceuticals to designated facilities: Medco shall provide pharmaceuticals to facilities designated by the electing State Attorney General or his or her lawful designee ("designated facilities"), by paying for drug purchases by designated facilities up to each designated facility's allotted pharmaceutical amount, as described herein. A designated facility may be a health clinic, hospital, pharmacy,

charitable organization, governmental agency or governmental entity, and must dispense medications in a manner that complies with all applicable state and/or federal laws. The electing State Attorney General shall designate the facilities to receive pharmaceuticals and, for each designated facility, the portion (in dollars) of the State pharmaceutical amount allocated to the facility, up to the total State pharmaceutical amount. Upon such designation, a designated facility, after purchasing pharmaceuticals in its normal course of business, may either: (i) forward to Medco unpaid invoices for pharmaceutical purchases by the designated facility, which Medco shall pay, up to the designated facility's allotted pharmaceutical amount, within a reasonable time period, not to exceed thirty days after Medco's receipt; or (ii) forward to Medco paid invoices for pharmaceutical purchases which Medco shall pay, up to the designate facility's allotted pharmaceutical amount, within a reasonable time period, not to exceed thirty days after Medco's receipt. Medco may require that all requests for payment from designated facilities pursuant to this subsection be received by Medco within two years of the Effective Date. In the event that invoices forwarded to Medco reflect non-public, proprietary pricing information of a designated facility, the designated facility may take reasonable steps to avoid disclosure of the proprietary pricing information.

b) Pre-paid generic drugs card: Medco shall provide pre-paid generic drug cards ("drug cards") to the electing State Attorney General or its lawful designee, for distribution, at the discretion of the Attorney General or its designee, to persons or organizations in the electing State in order to provide generic pharmaceuticals, at no cost, to persons in need, either

directly or through organizations. The drug cards shall have a predetermined value (e.g., $250.00) agreed to by the electing State and Medco (between $150.00 and $400.00, available only in $50.00 increments). Upon distribution of the drug cards, card holders may use the drug card to pay for generic drug prescriptions ordered and filled through Medco's home delivery pharmacies. To facilitate distribution of drugs paid for by the drug card, Medco may require the card holder to complete a standard enrollment form for its home delivery pharmacies. With respect to such enrollment, and with respect to prescription dispensing practices, protection of personal information, pharmacist consultation and customer service, card holders shall receive Medco's standard terms and pharmacy services provided to other Patients. Beyond providing its standard pharmacy services and customer service to card holders in connection with filling prescriptions for card holders, Medco shall not market other goods or services to card holders, and shall not sell or provide card holders' personal information to any other entity. For purposes of exhausting a drug card's predetermined value, the value of drugs dispensed under each drug card shall be the lower of (i) Medco's Medicare MAC or (ii) HCFA MAC minus ten percent (-10%), at the time of dispensing. Medco may limit generic dispensing pursuant to this subsection to prescriptions received by Medco within (i) eighteen months of each card holder's initial enrollment (*i.e.*, first prescription order), or (ii) two years of the Effective Date, whichever is earlier.

Regardless whether an electing State chooses pharmaceutical distribution via payments to designated facilities or generic drug cards, or both, each electing State shall designate, not later

than 30 days after the Effective Date, a person to serve as the electing State's liaison with Medco for the purpose of effecting the distribution of pharmaceuticals hereunder (including, for example, notifying Medco of the electing State's choice of distribution, designation of facilities, or determination of drug card values). Not later than 30 days after the Effective Date, Medco shall designate a person to serve as liaison to each electing State to effect such distribution and compliance with this program.

VII. PAYMENT OF FEES AND COSTS TO THE STATES

A. Fees and Costs to the States

On or before the Effective Date of this Order, Medco shall pay $6.6 million to the participating State Attorneys General, to be distributed among those participating states as agreed by the Attorneys General, for attorney's fees and investigative costs, consumer education, litigation, public protection, consumer protection purposes or local consumer aid funds or any other purpose permitted by state law at the sole discretion of each state's Attorney General. Medco shall pay this amount by check to the Office of the Pennsylvania Attorney General. The Pennsylvania Attorney General shall hold that payment in trust and, as soon as practicable but not later than six months after receipt, shall distribute the payment among the participating states pursuant to the participating states' agreement, provided, however, that, prior to receiving its allotted distribution hereunder, a State has entered in its State a Consent Order in substantively the same form as this Consent Order.

VIII. GENERAL PROVISIONS

1. Scope of Consent Order.

The injunctive provisions of this Consent Order are entered into pursuant to RCW 19.86.080 and are applicable to Medco, its officers, agents, employees, and attorneys, and all those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device.

2. Release of Claims.

By its execution hereof, each Settling State releases Medco and all of its subsidiaries, affiliates, assigns, corporate predecessors and successors ("Releasees") from all civil claims, causes of action, damages, restitution, fines, costs and penalties on behalf of the State, with the exception of any claim pursuant to a state false claims act statute or any other right or cause of action belonging to a State proprietary health plan[3], which the State asserted or could have asserted from January 1, 1995, through the date the parties execute this Consent Order, under the above-cited consumer protection statutes and any antitrust or unfair competition laws, relating to or based upon the Covered Conduct which is the subject of this Consent Order.

Medco specifically acknowledges that this settlement and Consent Order does not encompass a settlement or release of any claim, right, or cause of action by a State proprietary health plan, and that the State is not settling or releasing Medco with respect to any claim or potential claim of such entities.

Except as to the State proprietary health plan, the State agrees that it shall not proceed with or institute any civil action or proceeding, either individually or collectively, based upon these statutes, laws and regulations against the Releasees, including but not limited to an action or proceeding seeking restitution, injunctive relief, fines, penalties, attorneys fees or costs for any conduct undertaken or omissions prior to the date the parties execute this Consent Order which relates to the Covered Conduct. The State shall also not initiate any claim in the nature of a class action with respect to any Covered Conduct from January 1, 1995, through the date the parties execute this Consent Order. Medco may plead this Order as a full and complete defense to any claim, whether class, individual or otherwise in nature**,** released hereunder that may be instituted, prosecuted, or attempted by any Settling State with respect to the Covered Conduct.

[3] State proprietary health plan means a health plan of a state, state agency, state subdivision, state college university system or any state public or quasi-public entity that contracted with Medco for PBM services.

Notwithstanding the foregoing, the State does not release any claim arising under statutes, laws or regulations other than those identified herein and in section II(1) above and arising out of the Covered Conduct which is the subject matter of this Consent Order. Claims excluded from the State's release include, but are not limited to, claims relating to Best Price, Average Wholesale Price or Wholesale Acquisition Cost reporting practices or Medicaid fraud or Abuse. In addition, the State does not release any claim, right or cause of action that could be brought by any consumer or brought by any person or entity other than the State. Moreover, the State may institute an action or proceeding to enforce the terms and provisions of this Consent Order or take action based on future conduct by the Releasees.

3. Preservation of Law Enforcement Action.

Nothing herein precludes the State from enforcing the provisions of this Consent Order, or from pursuing any law enforcement action with respect to the acts or practices of Medco not covered by this Consent Order or any acts or practices of Medco conducted after the Effective Date of this Consent Order.

4. Compliance with and Application of State Law.

Nothing herein relieves Medco of its duty to comply with applicable laws of the State nor constitutes authorization by the State for Medco to engage in acts and practices prohibited by such laws. This Consent Order shall be governed by the laws of each of the respective States, with respect to Medco's conduct in each of the States.

5. Non-Approval of Conduct.

Nothing herein constitutes approval by the State of Medco's therapeutic interchange program or other business practices. Medco shall not make any representation contrary to this paragraph.

6. Effective Date.

The "Effective Date" shall be the date that Medco executes the attached Consent to Judgment form.

ATTORNEY GENERAL OF WASHINGTON
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7. Effective Date of Section V.

Notwithstanding that Medco shall endeavor to comply with all injunctive terms in Section V as promptly as practicable, Sections A.4, A.5, B, C, D, E, and F.1, all in Section V above, shall be effective 120 days after the Effective Date.

IX. COMPLIANCE PROVISIONS

1. Within 30 days after the Effective Date of this Order, Medco must provide a copy of this Order and obtain a signed and dated acknowledgment of receipt from:

a) each officer and director;

b) Medco senior management, namely, the top 200 leadership positions at Medco, which shall include the Chief Executive Officer, each position that reports to the CEO (excluding Administrative Assistants), each position that reports to a position that reports to the CEO (excluding Administrative Assistants), and all other "grade 3" employee positions under Medco's current grading system;

c). each managers of Medco pharmacies, managers of managed care operations, and pharmacists involved in drug interchange communications with patients or prescribers; and

d) each customer service representative to whom a telephone call concerning Drug Interchanges may be directed in the routine routing of calls.

2. For five years from the Effective Date, Medco shall provide a copy of this Order and obtain a signed and dated acknowledgment of receipt from future personnel described in 1 (a) through (d) of this section within 30 days after the person assumes such position or responsibilities.

3. Medco shall make this Order accessible to Client Plans and Patients through its website.

4. Medco shall maintain an executive review panel to assess, on a quarterly basis, Medco's compliance with this Order. As warranted the panel will review and/or recommend initiatives to ensure that Medco's drug interchange practices and disclosures to Prescribers, Patients and Client Plans comply with this Order.

5. Medco shall maintain and distribute methods and procedures (M&Ps) establishing a code of conduct for all Medco employees engaged in the drug interchange program. The M&Ps must be designed to establish quality standards for the manner in which information is disseminated to Prescribers and Patients by Medco employees regarding drug interchanges. Medco will review the M&Ps annually with their pharmacists and other personnel involved with the drug interchange program.

6. Medco shall create and retain, for a period of five (5) years following the date of creation, books and records that in reasonable detail accurately reflect Medco's compliance with this Order. These records must include, but are not limited to, the following:

a) documents reflecting the current addresses, telephone numbers, fax numbers and email addresses for Medco and its subsidiaries:

b) the original signed and dated acknowledgements of the receipt of the Order described in paragraph 1 of this section;

c) documents provided to or received from Client Plans concerning any Client Plans' instructions, if any, concerning opting out of any provisions of this Order;

d) an exemplar of each written notice sent to Prescribers regarding Drug Interchanges;

e) an exemplar of each written notice sent to Patients regarding Drug Interchanges;

f) a copy of each script used in telephonic communications with Prescribers and Patients relating to Drug Interchanges.

g) a copy of all training materials used to inform employees of the requirements of this Order ;

h) a copy of all M&Ps developed by the executive review panel;

i) the P&T Committee information described in Section V.C.(6);

j) documents concerning the drug pairs subject to Drug Interchanges

k) documents reflecting Patient rejections of Drug Interchanges; and

l) exemplars of Medco's quarterly and annual disclosures to client plans required by section V E of this order.

7. One year after the Effective Date, and then annually for five years from the Effective Date, Medco shall provide to the Attorney General of each Participating State a certification, signed by a Medco senior officer, certifying Medco's compliance with this Consent Order. Medco's annual certification may be accompanied by a report showing the manner in which Medco has complied with the Consent Order.

8. For a period of five years beginning on the Effective Date of this order, and within thirty (30) days of a written request by an Attorneys General, Medco shall provide to that Attorneys General:

a) Copies of the documents described in the preceding paragraph; and

b) such other records and documents as the Attorneys General determines reasonably bear on compliance with this Order.

9. Nothing in this Order limits the Attorney General's lawful use of compulsory process to investigate whether Medco has violated any provision of law enforced by the Attorneys General.

X. ADMINISTRATIVE PROVISIONS

1. Jurisdiction is retained of this matter for all purposes, including but not limited to, the purpose of enabling any of the parties to this Order to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or

modification of this Order, for the enforcement of compliance therewith or for the punishment of violations thereof.

2. The State shall give Medco 30 days' notice before filing a motion or other pleading seeking contempt of court or other sanctions for violation of this Consent Order. The giving of such notice shall not prevent the State from beginning such proceeding following the expiration of the 30 day period.

3. Any party to this Consent Order may petition the Court for modification on thirty (30) days' notice to all other parties to this Consent Order. Medco may petition for modification if it believes that the facts and circumstances that led to the State's action against Medco have changed in any material respect. The parties by stipulation may agree to a modification of this Consent Order, which agreement shall be presented to this Court for consideration; provided that the parties may jointly agree to a modification only by a written instrument signed by or on behalf of both Medco and the State. If Medco wishes to seek a stipulation for a modification from the State, it shall send a written request for agreement to such modification to the Attorney General of the state at least 30 days prior to filing a motion with the Court for such modification. Within 30 days of receipt from Medco of a written request for agreement to modify, the Attorney General of the State shall notify Medco in writing if the Attorney General of the State agrees to the requested modification

4. If, after the date of entry of this Consent Order, the State, its Attorney General, or any agency of the State enacts or promulgates legislation, rules or regulations with respect to matters governed by this Consent Order that conflict with any provision of this Consent Order, or if the applicable law of the State shall otherwise change so as to conflict with any provision of this Consent Order, the Attorney General shall not unreasonably withhold its consent to the modification of such provision to the extent necessary to eliminate such conflict. Laws , rules, or regulations, or other change in State law, with respect to the matters governed by this Consent Order, shall not been deemed to conflict with a provision of this Consent Order unless

Medco cannot reasonably comply with both such law, rule, or regulation and an applicable provision of this Consent Order.

SO ORDERED this _____ day of April, 2004.

_____
(JUDGE/COURT COMMISSIONER)
King County Superior Court

Presented by:

CHRISTINE O. GREGIORE
Attorney General

_____
ROBERT A. LIPSON, WSBA #11889
Attorneys for Plaintiff
State of Washington

Approved as to form
Notice of presentation waived:

_____
JIM WEBBER, WSBA #16882
LITTLER, MENDELSON
701 Fifth Avenue, Suite 6500
Seattle, Washington 98104
206.381.4903
Attorneys for Defendants

CONSENT TO JUDGMENT

1. Medco acknowledges that it has read the foregoing Consent Order, is aware of its right to a trial in this matter and has waived that right.

2. Medco admits to the jurisdiction of the Court and consents to the entry of this Consent Order.

3. Medco states that no promise of any kind or nature whatsoever (other than the written terms of this Consent Order) was made to it to induce it to enter into this Consent Order, that it has entered into this Consent Order voluntarily, and that this Consent Order constitutes the entire agreement between Medco and the State of Washington.

4. David B. Snow, Jr., represents that he is the Chairman, President, and Chief Executive Officer of Medco and that, as such, he has been authorized by Medco to enter into this Consent Order for and on behalf of all entities bound by this Consent Order.

DATED this _____ day of April, 2004.

_____

DAVID B. SNOW, JR.
Chairman, President and Chief Executive Officer
Medco Health Solutions, Inc.
100 Parsons Pond Drive
Franklin Lakes, New Jersey